



**Registration of a Charge**

Company name: **KINNOULL HOUSE LIMITED**

Company number: **SC190800**



X661WN3T

Received for Electronic Filing: **09/05/2017**

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**Details of Charge**

Date of creation: **02/05/2017**

Charge code: **SC19 0800 0008**

Persons entitled: **LLOYDS BANK PLC**

Brief description:

**Contains fixed charge(s).**

**Contains negative pledge.**

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**Authentication of Form**

This form was authorised by: **a person with an interest in the registration of the charge.**

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**Authentication of Instrument**

Certification statement: **I CERTIFY THAT SAVE FOR MATERIAL REDACTED PURSUANT TO S.859G OF THE COMPANIES ACT 2006 THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by: **JAMES WILSON**



## **CERTIFICATE OF THE REGISTRATION OF A CHARGE**

Company number: 190800

Charge code: SC19 0800 0008

The Registrar of Companies for Scotland hereby certifies that a charge dated 2nd May 2017 and created by KINNOULL HOUSE LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 9th May 2017 .

Given at Companies House, Edinburgh on 10th May 2017

The above information was communicated by electronic means and authenticated by the Registrar of Companies under section 1115 of the Companies Act 2006



**Companies House**



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES

**DEED OF NOVATION**

**between**

**THE ROYAL BANK OF SCOTLAND PLC**

**and**

**LLOYDS BANK PLC**

**and**

**KINNOULL HOUSE LIMITED**

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**Re: Assignment of Insurances**

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DEED OF NOVATION made on 2 May 2017 (this "Deed")

between

- (1) THE ROYAL BANK OF SCOTLAND PLC incorporated in Scotland (Registered Number SC090312) and having its registered office at 36 St Andrews Square, Edinburgh, EH2 2YB ("RBS");
- (2) LLOYDS BANK PLC incorporated in England and Wales (Registered Number 00002065) and having its registered office at 25 Gresham Street, London EC2V 7HN as agent and security trustee for and on behalf of the Banks in accordance with the terms of the Facility Agreement ("Lloyds").
- (3) KINNOULL HOUSE LIMITED, a company incorporated under the Companies Acts (registered number SC190800) and having its registered office at c/o Infrastructure Managers Limited, 2<sup>nd</sup> Floor, 11 Thistle Street, Edinburgh, EH2 1DF ("KHL").

#### WHEREAS

- (A) RBS (in various capacities) and KHL entered into a facility agreement dated 30 March 1999 relating to a sterling term loan facility of £19,043,000 and a standby facility of £750,000 which were provided to KHL for the design, construction and commissioning of office and car park accommodation in Perth & Kinross (the "Facility Agreement");
- (B) Pursuant to the Facility Agreement, KHL and RBS entered into a deed of assignment of insurances dated on or about 30 March 1999 (the "Deed of Assignment of Insurances");
- (C) By a transfer deed dated on or about the date hereof between *inter alios* RBS and Lloyds (the "Transfer Deed"), Lloyds is to become *inter alia* Security Trustee in relation to the Security Documents (as defined in the Facility Agreement);
- (D) Pursuant to the Transfer Deed, RBS wishes to assign and transfer to Lloyds all of its right, title and interest in the Deed of Assignment of Insurances and Lloyds and KHL have agreed to such assignment and transfer; and
- (E) This Deed is supplemental to the Financing Documents.

#### IT IS AGREED

##### 1. DEFINITIONS

- 1.1 Terms defined within the Transfer Deed, unless otherwise defined in this Deed, will bear the same meanings in this Deed.
- 1.2 The provisions of Clause 1.3 of the Facility Agreement shall apply *mutatis mutandis* to this Deed.

## 2. DEED OF ASSIGNMENT OF INSURANCES

On the Effective Date:

- 2.1 RBS assigns absolutely to Lloyds all its rights, title and interest in or arising under the Deed of Assignment of Insurances and Lloyds becomes a party to the Deed of Assignment of Insurances in place of RBS;
- 2.2 Lloyds consents to and accepts such assignment and agrees that it will undertake and perform the Obligations of RBS under the Deed of Assignment of Insurances and declares that it will hold all property rights and interests vested in it, in trust for the persons entitled thereto (including, without prejudice to the foregoing generality, the New Parties), in accordance with the terms of the Financing Documents as amended from time to time;
- 2.3 KHL acknowledges and agrees to the assignment and transfer effected by Clauses 2.1 and 2.2; and
- 2.4 the respective rights of RBS and KHL against each other under the Deed of Assignment of Insurances shall be terminated on the Effective Date and each shall be released with effect on and from the Effective Date from all further Obligations to the other under the Deed of Assignment of Insurances.

## 3. MISCELLANEOUS

- 3.1 It is agreed that this Deed constitutes a Financing Document for the purposes of the Facility Agreement.
- 3.2 RBS makes no representation or warranty and assumes no responsibility with respect to the execution, validity, genuineness, sufficiency or enforceability of the Deed of Assignment of Insurances and assumes no responsibility for the financial condition of KHL or for the performance and observance by KHL of any of its obligations under the Deed of Assignment of Insurances and any and all such conditions and warranties, whether express or implied by law or otherwise, are expressly excluded.
- 3.3 Nothing in this Deed obliges RBS to:
  - 3.3.1 accept a retransfer from Lloyds of any of the rights and/or obligations transferred by or as a result of this Deed; or
  - 3.3.2 support any losses incurred by Lloyds by reason of the non-performance by KHL or any other party of its obligations under the Deed of Assignment of Insurances.
- 3.4 KHL will pay, and forthwith on demand indemnify each other party to this Deed against any liability it incurs in respect of, any registration or similar tax which is or becomes payable in connection with the entry into, performance or enforcement of this Deed.

- 3.5 KHL agrees to pay all costs and expenses reasonably incurred by RBS and Lloyds arising out of or in connection with the negotiation, preparation and execution of this Deed.

4. **TIME-LIMITS**

Where the Effective Date has not occurred on or before the day falling three months after the date of this Deed, this Deed will be void *ab initio*, unless RBS, Lloyds and KHL agree otherwise in writing.

5. **COUNTERPARTS**

This Deed may be executed in any number of counterparts. This has the same effect as if the signatures on the counterparts were on a single copy of this Deed.

6. **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

No rights are conferred on any person under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed, but this does not affect any right or remedy of any person which exists or is available apart from that Act.

7. **GOVERNING LAW**

This Deed and any non-contractual obligations arising out of or in connection with it are governed by English law.

8. **JURISDICTION**

8.1 The English courts have exclusive jurisdiction to settle any dispute in connection with this Deed.

8.2 The English courts are the most appropriate and convenient courts to settle any dispute.

IN WITNESS of which this deed has been executed and is intended to be and is hereby delivered on the date first above written.

SIGNED as a DEED for and on behalf of  
THE ROYAL BANK OF SCOTLAND PLC

by

Name: *IAN ELLIS*

Signature:

under a power of attorney dated *19 December 2016*

in the presence of:

Signature of witness:

Name of witness: *KATIE JAMES*

Address: *ALLEN & OVERY, ONE BISHOPS SQUARE, LONDON, E1 6AD*

Occupation: *TRAINEE SOLICITOR*



SIGNED as a DEED for and on behalf of  
LLOYDS BANK PLC

by: Andrew Butt

under a power of attorney dated 20 June 2016

in the presence of:

Name of witness: Lily Manser

Signature of witness:

Address: MacLay Murray & Spens LLP  
One London Wall  
London EC2Y 5AB  
DX 123 London/Chancery Lane  
Occupation: Trainee Solicitor

SIGNED as a DEED for and on behalf of  
KINNOULL HOUSE LIMITED

by JOHN CAVILL (Print full name) ..... (Signature)  
Director/Authorised Signatory

by ..... (Print full name) ..... (Signature)  
Director/Authorised Signatory

before this witness:

LEONIE BYERS (Print full name) ..... (Signature)

c/o ..... (Witness Address)

Maclay Murray & Spens LLP

One London Wall

London EC2Y 5AB

DX 123 London/Chancery Lane

[AC/C:P&K/ASSIGNMENT OF INSURANCES]

**DEED OF ASSIGNMENT OF INSURANCES**

by

**KINNOULL HOUSE LIMITED**

in favour of

**THE ROYAL BANK OF SCOTLAND plc  
(as Security Trustee)**

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**Perth & Kinross Office Accommodation Project**

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**macROBERTS**  
SOLICITORS

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**DEED OF ASSIGNMENT OF INSURANCES** made on

1999

by

- (1) **KINNOULL HOUSE LIMITED**, a company incorporated in Scotland under the Companies Acts (no.190800) and having its registered office at Morrison House, 12 Atholl Crescent, Edinburgh, EH3 8HA ("**Assignor**")

in favour of

- (2) **THE ROYAL BANK OF SCOTLAND plc**, as security trustee for itself and each of the Banks ("**Security Trustee**")

**WHEREAS**

- (i) the Banks have agreed to make certain facilities available to the Assignor under the Loan Agreement.
- (ii) one of the conditions precedent to the availability of the aforementioned facilities is that the Assignor grants to the Security Trustee, as trustee for itself and for each of the Banks, this Deed of Assignment.

**IT IS PROVIDED AND DECLARED that:-**

**1. DEFINITIONS AND INTERPRETATION**

**1.1 In this Deed:-**

**Banks** means the banks (including the Security Trustee) and other financial institutions who are or from time to time become Banks for the purposes of the Loan Agreement;

**Charged Assets** means the proceeds of the Policies together with:-

- (i) all the rights and benefits now or in the future arising under, or pertaining to, or deriving from the Policies and all powers and remedies for enforcing the same;
- (ii) all monies which at any time shall or may be or become payable to the Assignor pursuant thereto; and
- (iii) the proceeds of any claims, awards, decrees and judgements which may at any time be receivable or received by the Assignor pursuant thereto;

**Default** has the meaning given to it in the Loan Agreement;

**Default Rate** means the rate of interest specified in clause 6.5 of the Loan Agreement;

**Delegate** means a delegate or sub-delegate appointed, directly or indirectly, under clause 4.2;

**Financing Documents** has the meaning given to it in the Loan Agreement;

**Lenders' Direct Agreement** means the Agreement with that title, dated today's date and entered into by the Assignor, the Security Trustee and Perth & Kinross Council;

**Loan Agreement** means the Agreement with that title, dated today's date and entered into by the Assignor and the Security Trustee;

**Policies** means all policies and contracts of insurance from time to time effected by or for the benefit of the Assignor pursuant to Part 5 of the Schedule to the Loan Agreement or pursuant to the Financing Documents;

**Project Accounts Agreement** means the Agreement with that title, dated today's date and entered into by the Assignor and the Security Trustee;

**Schedule** means the schedule to, and forming part of, this Deed;

**Secured Liabilities** means all present and future obligations and liabilities of the Assignor to the Security Trustee and/or the Banks under this Deed and/or under the Loan Agreement, and/or any of the other Financing Documents and/or any deed or document supplemental thereto, whether actual or contingent, sole, joint and/or several or otherwise, including, without prejudice to the foregoing generality, all obligations to indemnify the Security Trustee and the Banks;

- 1.2 Unless otherwise stated, terms and expressions defined in the Loan Agreement shall have the same meaning in this Deed.
- 1.3 The expressions **the Assignor** and **the Security Trustee** shall include the permitted successors, assignees and transferees of the Assignor and the Security Trustee.
- 1.4 Unless any provisions of this Deed or the context otherwise requires, any reference in this Deed to any statute or any section of any statute shall be deemed to include a reference to any statutory modification or re-enactment thereof for the time being in force.
- 1.5 In this Deed the singular includes the plural and vice versa. Clause headings are for the convenience of reference only and a reference to a clause or Schedule or Part of a Schedule is a reference to a clause of or schedule or part of a schedule to this Deed.
- 1.6 Any reference in this Deed to a document of any kind whatsoever (including this Deed) is to that document as amended or varied or supplemented or novated or substituted from time to time.

1.7 Except as otherwise expressly provided for above, the provisions of clause 1.2 of the Loan Agreement shall apply to this Deed, mutatis mutandis, as if the same had been set out in full in this Deed.

1.8 Any reference in this Deed to **remedied** or **unremedied** means remedied or, as the case may be, not remedied to the satisfaction of the Security Trustee and any reference to **waived** or **unwaived** means waived or, as the case may be, not waived in writing by the Security Trustee making specific reference to this Deed and the matter to be remedied or waived.

## **2. ASSIGNMENT IN SECURITY**

### **2.1 Payment to the Banks**

The Assignor undertakes to the Security Trustee that it will pay and discharge the Secured Liabilities to the Banks as and when the same become due for payment and discharge in accordance with the provisions of the Financing Documents or other documents in accordance with which the Secured Liability in question has become due for payment and discharge.

### **2.2 Assignment in Security**

The Assignor with full title guarantee hereby assigns to the Security Trustee, as a continuing security for the payment and discharge of the Secured Liabilities, the Charged Assets and the Assignor's whole right, title and interest in and to the Charged Assets.

### **2.3 Delivery of Documents**

The Assignor shall, on execution of this Deed or, if any Policy is not in effect at such date, on each Policy being effected, deliver or cause to be delivered to the Security Trustee a copy of each of the Policies certified by one of the directors of the Assignor to be a true and complete copy.

### **2.4 Perfection of Security**

The Assignor shall:-

- (a) procure that on execution of this Deed notice of the assignment of the Charged Assets pursuant to this Deed (in the form of the notice set out in the Schedule) is given to the insurer named on each Policy; and
- (b) procure that as soon as practical following their receipt of such notice, all such persons give an acknowledgement of receipt of such notice in the form of the acknowledgement set out in the Schedule.

### **3. THE POLICIES**

#### **3.1 No Amendments etc**

3.1.1 Save to the extent otherwise contemplated by the Loan Agreement, the Assignor shall not, without the prior written consent of the Security Trustee, propose or agree to any amendment or variation to the Policies (or any of them).

3.1.2 The Assignor shall not do anything which prejudices or is likely to prejudice the Policies or any of them.

#### **3.2 Enforcement of Rights under Policies**

The Assignor shall subject to the terms of the Loan Agreement (which in the case of conflict shall prevail):-

3.2.1 procure the due and punctual performance by each of the other parties to the Policies of their respective obligations under the Policies;

3.2.2 promptly and diligently:-

3.2.2.1 perform the obligations on its part contained in the Policies;

3.2.2.2 notify the Assignor of any default (whether by it or by any other party) under the Policies; and

3.2.2.3 institute and maintain all such proceedings and take such other steps as may be necessary or expedient to preserve or protect the interests of the Assignor and of the Security Trustee in and to the Policies.

#### **3.3 Dealing in Policies etc**

The Assignor undertakes to the Security Trustee that the Assignor (save to the extent otherwise provided in the Financing Documents) without the prior consent in writing of the Security Trustee:-

3.3.1 shall not assign, transfer or otherwise dispose of or create any security over, any of the Charged Assets to or in favour of any person other than the Security Trustee

3.3.2 shall not waive, fail or delay to enforce any of its rights under the Policies or terminate or agree to terminate the Policies or any of them;

3.3.3 shall not take or omit to take any action the taking or omission of which might result in the alteration or impairment of the Policies or this Deed or any of the rights under the Policies.



- 3.3.4 shall forthwith notify and consult with the Security Trustee as soon as it becomes aware of any occurrence which would reasonably be expected to entitle it to submit a claim under the Policies or any of them;
- 3.3.5 shall, if any Policy shall become voidable or void, forthwith at the Assignor's own cost do all such things as may be necessary for restoring the same or if any policy shall become void for effecting or for enabling the Security Trustee to effect a new insurance or new insurances in place of the void Policy in the name of the Security Trustee for the sum or sums which would have been payable under the void Policy (whether the sum assured or the surrender value) with an insurance company approved by the Security Trustee;
- 3.3.6 shall punctually pay all premiums and any other sums of money (if any) to keep the Policies or any such new and substituted insurances as aforesaid on foot within seven days after the same shall from time to time become due and will deliver the receipt or sufficient evidence of every payment to the Security Trustee whenever required by the Security Trustee;
- 3.3.7 shall promptly and duly pay, and indemnify the Security Trustee against all existing and future taxes, duties, fees, charges, assessments, impositions and outgoings whatsoever (whether imposed by deed or statute or otherwise and whether in the nature of capital or revenue and even though of a wholly novel character) which now or at any time during the continuance of the Secured Liabilities are incurred by it by virtue of this Deed and which the Assignor is legally obliged to pay.

#### **3.4 Receipts**

All proceeds of the Policies shall be paid by the Assignor into its account with the Security Trustee entitled "Compensation Account" at the Security Trustee's branch at 49 Charing Cross, Admiralty Arch, London, SY1A 2DX sort code 16-00-38, account number 00734818 or such other account notified by the Security Trustee to the Assignor for these purposes from time to time and shall be applied as set out in the Lenders' Direct Agreement, the Loan Agreement or the Project Accounts Agreement (as the case may be).

#### **3.5 Liability to perform**

- 3.5.1 Notwithstanding any other provision of this Deed, the Assignor shall remain liable under the Policies to perform all the obligations assumed by it thereunder and the Security Trustee shall not be under any obligation or liability to the Assignor or any other person under or in respect of any of the Policies whether by reason of this Deed or otherwise and the Security Trustee shall not have any obligation or liability to enforce against any other party to the Policies any provision of the Policies or to make any enquiries as to nature or sufficiency of any payment received by the Security Trustee by virtue of this Deed.

- 3.5.2 Without prejudice to clause 3.5.1, if the Assignor fails to perform any of its obligations under the Policies, the Security Trustee may, but shall not be under any obligation to, perform or procure the performance of such obligation. If the Security Trustee shall perform or procure the performance of any obligation of the Assignor under the Policies, the Assignor shall, without prejudice to any other right of the Security Trustee, forthwith on demand by the Security Trustee reimburse the Security Trustee for all costs and expenses properly incurred by it in so doing together with interest thereon at the Default Rate from the date such costs and expenses are incurred until the date of payment by the Assignor to the Security Trustee (but without double counting of default interest which is charged on such costs and expenses under any other agreement).

#### **4. RIGHTS OF SECURITY TRUSTEE**

##### **4.1 Rights**

At any time after the occurrence of a Default which is continuing unremedied or unwaived the Security Trustee shall be entitled either in its own name or in the name of the Assignor or otherwise and in such manner and upon such terms and conditions as the Security Trustee thinks fit to reduce and/or deal with the Charged Assets as follows:-

##### **4.1.1 Claims**

to settle, adjust, refer to arbitration or any other dispute resolution procedure, compromise and/or arrange any claims, accounts, disputes, questions and demands with or by any person relating in any way to Policies and/or the Charged Assets;

##### **4.1.2 Legal Actions**

to bring, prosecute, enforce, defend and abandon actions, suits and proceedings in relation to the Policies and/or the Charged Assets;

##### **4.1.3 Redemption of Security**

to redeem any security (whether or not having priority to the security created by this Deed) over the Policies and/or the Charged Assets and to settle the accounts of the holders of any such security; and

##### **4.1.4 Other Powers**

to do all such other acts and things it may consider necessary or expedient for the realisation of the Charged Assets or incidental to the exercise of any of the rights conferred on the Security Trustee under or by virtue of this Deed and to concur in the doing of anything which the Security Trustee has the right to do and to do any such thing jointly with any other person.

#### **4.2 Delegation**

The Security Trustee may delegate in any manner to any person any of the rights which are for the time being exercisable by the Security Trustee under this Deed. Any such delegation may be made upon such terms and conditions (including power to sub-delegate) as the Security Trustee may think fit.

#### **5. NO LIABILITY OF SECURITY TRUSTEE OR DELEGATES**

- 5.1 The Security Trustee shall not in any circumstances be liable to the Assignor or any other person for any costs, charges, losses, damages, liabilities or expenses arising from or connected with any realisation of the Charged Assets or from any act, default or omission of the Security Trustee, its officers, employees or agents in relation to the Charged Assets or in connection with this Deed except to the extent that the same are incurred by reason of the Security Trustee's, or its employees' or agents' gross negligence or wilful default.
- 5.2 The Assignor shall keep the Security Trustee indemnified from and against all losses, costs, expenses (including legal costs and expenses), claims, proceedings, liabilities or demands suffered, incurred or made by the Security Trustee in connection with this Deed, the Policies and/or the Charged Assets except to the extent that the same are incurred by reason of the Security Trustee's, the Banks or its or their employees or agents gross negligence or wilful default.
- 5.3 Clauses 5.1 and 5.2 shall apply, mutatis mutandis, in respect of the liability of any Delegate or any officer, employee or agent of the Delegate.

#### **6. PROTECTION OF THIRD PARTIES**

No person dealing with the Security Trustee or any Delegate shall be concerned to enquire whether any Default has occurred, whether any consents, regulations, restrictions or directions relating to the rights of the Security Trustee or any Delegate have been obtained or complied with or otherwise as to the propriety or regularity of acts purporting or intended to be in exercise of any such rights or as to the application of any money borrowed or raised.

#### **7. POWER OF ATTORNEY**

##### **7.1 Appointment**

The Assignor hereby irrevocably appoints the Security Trustee and every Delegate jointly and severally as its attorney (with full power of substitution), on its behalf and in its name or otherwise, at such times and in such manner as the attorney may think fit:-

7.1.1 to do anything which the Assignor is obliged to do (but has not done) under this Deed including, without limitation, to execute charges over, transfers or assignments of, and other instruments relating to, the Charged Assets; and

7.1.2 generally to exercise all or any of the rights conferred on the Security Trustee or any Delegate in relation to the Charged Assets or under this Deed.

## **7.2 Ratification**

The Assignor hereby ratifies and confirms and agrees to ratify and confirm whatever any such attorney shall do or purport to do in the exercise or purported exercise of the power of attorney given by the Assignor in clause 7.1.

## **8. SET-OFF**

Without prejudice to any of its rights, remedies or powers, the Security Trustee and each of the Banks shall be entitled to hold all sums which are now or which may at any time hereafter be at the credit of any account or accounts in the name of the Assignor with the Security Trustee or the Banks as security for the Secured Liabilities and, upon the occurrence of a Default which is continuing unremedied or unwaived, to apply without notice to the Assignor any such sums in and towards discharge of the Secured Liabilities. The Security Trustee and each of the Banks shall not be obliged to exercise their rights under this clause, which shall be without prejudice and in addition to any right of set-off, compensation, combination of accounts, lien or other right to which they are at any time otherwise entitled (whether by operation of law, contract or otherwise).

## **9. APPLICATION OF ENFORCEMENT MONIES**

9.1 All monies received by the Security Trustee under this Deed shall be applied by it, subject to the claims of any creditors ranking in priority to or pari passu with the claims of the Security Trustee under this Deed, in the following order:-

9.1.1 in, or towards, payment of the costs, charges and expenses incurred by the Security Trustee in, or about, the exercise of its powers of enforcement and sale;

9.1.2 in, or towards, satisfaction of the Secured Liabilities in such order as the Security Trustee shall determine; and

9.1.3 any surplus shall be paid to the Assignor or any other person entitled to it.

9.2 A certificate signed by an authorised signatory of the Security Trustee as to the amount of any Secured Liabilities due, owing or incurred by the Assignor to the Security Trustee shall, (save for manifest error), be conclusive for the purposes of clause 9.1. For the purpose of any distribution by the Security Trustee, the

Security Trustee may fix a date as to which the amount of the Secured Liabilities is to be calculated and so certified.

- 9.3 The Security Trustee may retain any amount from time to time received or recovered by it as referred to in clause 9.1 for so long and in such manner as the Security Trustee may determine and the Security Trustee may credit any such amount to, and require the same to be paid to it for crediting to, a suspense account for so long and in such manner as the Security Trustee may determine.
- 9.4 Distributions by the Security Trustee shall be made at such times as the Security Trustee in its absolute discretion may determine as being appropriate.
- 9.5 Any appropriation or distribution which later transpires to have been, or is agreed between the Assignor and the Security Trustee to have been, invalid, or which has to be refunded, shall be refunded and shall be deemed never to have been made.
- 9.6 For the avoidance of doubt, any amounts due and/or recovered in respect of Employers' Liability Insurance or for a third party will be paid directly to that third party or employee and not to the Security Trustee.

## **10. RELEASE AND DISCHARGE**

- 10.1 The Security Trustee may at any time release the Assignor from any or all of its obligations under or pursuant to this Deed and/or all or any part of the Charged Assets from the security created by this Deed upon such terms as the Security Trustee may think fit but nothing in this Deed does or shall constitute or is intended to constitute a release of any of the Charged Assets.
- 10.2 Upon irrevocable payment or discharge in full of the Secured Liabilities, the Security Trustee shall at the Assignor's request and cost, release to the Assignor (or to such person as it may direct) the Charged Assets from this Deed.

## **11. PROTECTION OF SECURITY**

- 11.1 The security created by this Deed shall be a continuing security notwithstanding any settlement of account or other matter or thing whatsoever and in particular (but without prejudice to the generality of the foregoing) shall not be considered satisfied by an intermediate repayment or satisfaction of part only of the Secured Liabilities and shall continue in full force and effect until total and irrevocable satisfaction of all the Secured Liabilities.
- 11.2 The security created by this Deed shall be in addition to and shall not in any way prejudice or be prejudiced by any collateral or other security, right or remedy which the Security Trustee or the Banks may now or at any time hereafter hold for all or any part of the Secured Liabilities.

- 11.3 No failure on the part of the Security Trustee or the Banks to exercise and no delay on its part in exercising any right, remedy, power or privilege under or pursuant to this Deed or any other document relating to or securing all or any part of the Secured Liabilities will operate as a waiver thereof, nor will any single or partial exercise of any right or remedy preclude any other or further exercise thereof or the exercise of any other right or remedy. The rights and remedies provided in this Deed and any such other document are cumulative and not exclusive of any right or remedies provided by law.
- 11.4 Each of the provisions in this Deed shall be severable and distinct from one another and if at any time any one or more of such provisions is or becomes or is declared null and void, invalid, illegal or unenforceable in any respect under any law or otherwise howsoever, the validity, legality and enforceability of the remaining provisions of this Deed shall not in any way be affected or impaired thereby.
- 11.5 If the Security Trustee receives or is deemed to be affected by notice, whether actual or constructive, of any subsequent security or other interest affecting any part of the Charged Assets and/or the proceeds of sales thereof, the Security Trustee may open a new account or accounts with the Assignor. If the Security Trustee does not open a new account it shall nevertheless be treated as if it had done so at the time when it received or was deemed to have received notice and as from that time all payments made to the Security Trustee shall be credited or be treated as having been credited to the new account and shall not operate to reduce the amount for which this Deed is security.
- 11.6 Neither the security created by this Deed nor the rights, powers, discretions and remedies conferred upon the Security Trustee by this Deed or by law shall be discharged, impaired or otherwise affected by reason of:-
- 11.6.1 any present or future security, guarantee, indemnity or other right or remedy held by or available to the Security Trustee being or becoming wholly or in part void, voidable or unenforceable on any ground whatsoever or by the Security Trustee from time to time exchanging, varying, realising, releasing or failing to perfect or enforce any of the same; or
- 11.6.2 the Security Trustee compounding with, discharging or releasing or varying the liability of, or granting any time, indulgence or concession to, the Assignor or any other person or renewing, determining, varying or increasing any accommodation or transaction in any manner whatsoever or concurring in accepting or varying any compromise, arrangement or settlement or omitting to claim or enforce payment from the Assignor or any other person; or
- 11.6.3 anything done or omitted which but for this provision might operate to exonerate the Assignor from the Secured Liabilities; or

11.6.4 any legal limitation, disability, incapacity or other similar circumstance relating to the Assignor.

11.7 The Security Trustee shall not be obliged, before exercising any of the rights, powers or remedies conferred upon it by or pursuant to this Deed or by law, to:-

11.7.1 take any action or obtain judgement or decree in any Court against the Assignor;

11.7.2 make or file any claim to rank in a winding-up or liquidation of the Assignor; or

11.7.3 enforce or seek to enforce any other security taken, or exercise any right or plea available to the Security Trustee, in respect of any of the Assignor's obligations under the Financing Documents other than this Deed.

## **12. FURTHER ASSURANCE**

The Assignor shall execute and do all such assurances, acts and things as the Security Trustee may require for perfecting or protecting the security created by or pursuant to this Deed over the Charged Assets or for facilitating the realisation of such assets and the exercise of all powers, authorities and discretions vested in the Security Trustee pursuant to this Deed.

## **13. EXPENSES**

13.1 The Assignor binds and obliges itself for the whole expenses of completing and enforcing the security hereby granted and the expenses of any discharges thereof.

13.2 All costs, charges and expenses properly incurred and all payments made by the Security Trustee under this Deed in the lawful exercise of the powers hereby conferred whether or not occasioned by any act, neglect or default of the Security Trustee shall carry interest from the date of the same being incurred or becoming payable at the Default Rate. The amount of all such costs, charges, expenses and payments and all interest thereon and all remuneration payable hereunder shall be payable by the Assignor on demand and shall be a Secured Liability.

## **14. INDEMNITY**

The Security Trustee, and every Delegate, attorney, manager, agent or other person appointed by the Security Trustee in connection with this Deed shall be entitled to be indemnified out of the Charged Assets in respect of all liabilities and expenses properly incurred by them or him in the execution or purported execution of any of the powers, authorities or discretions vested in them or him

pursuant to this Deed and against all actions, proceedings, costs, claims and demands in respect of any matter or thing done or omitted in anyway relating to the Charged Assets (save to the extent the same are incurred by reason of the Security Trustee's, the Banks', any delegate or its or their (as the case may be) employees or agents gross negligence or wilful default) and the Security Trustee may retain and pay all sums in respect of the same out of any monies received under the powers conferred by this Deed.

#### **15. AVOIDANCE OF PAYMENTS**

Any amount which has been paid by the Assignor to the Security Trustee and which is, in the opinion of the Security Trustee, capable of being reduced or restored or otherwise avoided, in whole or in part in the liquidation or administration of the Assignor, shall not be regarded as having been irrevocably paid for the purposes of this Deed but in the case of part of such amount, only to the extent of such part.

#### **16. NOTICES**

All notices, requests, demands and other communications to be given under this Deed shall be given and/or be deemed to be given in the same manner as notices to be given under the Loan Agreement and the terms of clause 19 of the Loan Agreement shall apply mutatis mutandis to this Deed as though that clause were set out in full herein.

#### **17. SECURITY TRUSTEE**

The whole right, title and interest of the Security Trustee under and in terms of this Deed is held by the Security Trustee as agent and trustee for and on behalf of itself and the Banks, so that in the event of any change in the number or identity of the Banks under and in terms of the Loan Agreement, this Deed shall continue in full force and effect.

#### **18. ASSIGNMENT**

The Security Trustee may assign the benefit of this Deed to any person, including any person who is to act as trustee in relation to this Deed on behalf of the Banks in succession to the Security Trustee in accordance with the terms of the Loan Agreement.

#### **19. GOVERNING LAW**

This Deed shall be governed by, and construed in all respects in accordance with, the laws of England: IN WITNESS WHEREOF:

SIGNED on behalf of the Assignor by  
Director, at \_\_\_\_\_ on \_\_\_\_\_, 1999 in the presence of:-

Witness:



Full Name:

.....  
Director

Address:

SIGNED on behalf of the Security Trustee by  
Attorney, at                      on                      , 1999 in the presence of:-

Witness:

Full Name:

.....  
Attorney

Address:

## SCHEDULE

**This is the Schedule referred to in the foregoing Deed of Assignment of Insurances**

To: Insurers

Date:

Address:

The Royal Bank of Scotland plc (the "**Security Trustee**") and Kinnoull House Limited (the "**Company**") HEREBY GIVE NOTICE that by a Deed of Assignment dated [ ] 1999 (the "**Assignment**") and made between the Company and the Security Trustee, the Company assigned by way of security to the Security Trustee all its right, title and interest to proceeds and other benefits of the Insurances described below (the "**Insurances**") including (without limitation) all monies which at any time may be or become payable to the Company pursuant thereto and the proceeds of any claims, awards, decrees and judgements which may at any time be receivable or received by the Company in respect of the Insurances.

All monies payable by you to the Company pursuant to the Insurances shall continue to be paid to the Company unless and until you receive written notice from the Security Trustee advising you that a Default (as defined in the Assignment) has occurred and is continuing unremedied or unwaived, in which event you are hereby authorised and instructed to make all future payments as directed by the Security Trustee. This authority and instruction is irrevocable without the prior written consent of the Security Trustee.

Notwithstanding the Assignment or the making of any payment by you to the Security Trustee pursuant to it, the Company shall remain liable under the Insurances to perform all obligations assumed by it thereunder and neither the Security Trustee nor any receiver or delegate appointed by it shall at any time be under any obligation or liability to you under or in respect of the Insurances.

The Company shall also remain entitled to exercise all its rights, powers and discretions under the Insurances and you should continue to give notices under Insurances to the Company, in each case unless and until you receive written notice from the Security Trustee advising you that a Default (as defined in the Assignment) has occurred and is continuing unremedied or unwaived, in which event all such rights, powers and discretions shall be exercisable by, and notices shall be given to, the Security Trustee or as it directs.

Please acknowledge receipt of this notice, confirm that you will comply with all the provisions of this notice and undertake to the Security Trustee that you will perform, observe and comply with your obligations and undertakings under the Contract by signing the acknowledgement attached to this notice returning the duplicate to the Security Trustee at [PO Box 1727, Drummond House, 1 Redheughs Avenue, Edinburgh, EH12 9JN] and marked for the attention of "Director, Project Finance".

Insurances: [insert policy numbers]

.....  
For and on behalf of The Royal Bank of Scotland plc  
.....

.....  
For and on behalf of Kinnoull House Limited  
.....

[on duplicate]

We acknowledge receipt of a Notice of Assignment of which this is a copy and agree to comply with all the provisions of the Notice of Assignment. We undertake to the Security Trustee to perform, observe and comply with our obligations and undertakings under the Insurances. We confirm that we have not received any previous notice of assignment of the Insurances.

.....  
For and on behalf of  
.....

administration of the Assignor, shall not be regarded as having been irrevocably paid for the purposes of this Deed but in the case of part of such amount, only to the extent of such part.

**16. NOTICES**

All notices, requests, demands and other communications to be given under this Deed shall be given and/or be deemed to be given in the same manner as notices to be given under the Loan Agreement and the terms of clause 19 of the Loan Agreement shall apply mutatis mutandis to this Deed as though that clause were set out in full herein.

**17. SECURITY TRUSTEE**

The whole right, title and interest of the Security Trustee under and in terms of this Deed is held by the Security Trustee as agent and trustee for and on behalf of itself and the Banks, so that in the event of any change in the number or identity of the Banks under and in terms of the Loan Agreement, this Deed shall continue in full force and effect.

**18. ASSIGNMENT**

The Security Trustee may assign the benefit of this Deed to any person, including any person who is to act as trustee in relation to this Deed on behalf of the Banks in succession to the Security Trustee in accordance with the terms of the Loan Agreement.

**19. GOVERNING LAW**

This Deed shall be governed by, and construed in all respects in accordance with, the laws of England: IN WITNESS WHEREOF:

SIGNED on behalf of the Assignor by JOHN ALEXANDER HEPE  
Director, at Edinburgh on 30 MARCH, 1999 in the presence of:-

Witness:

Full Name: JAMES LIVINGSTONE

Address: 51 Melville St. Edinburgh

J Director

SIGNED on behalf of the Security Trustee by Rennie Jack  
Attorney, at Edinburgh on 30 MARCH, 1999 in the presence of:-

Witness:

Full Name: MARIE-CLAIRE DEVLIN

Address: 152 BATH STREET  
GLASGOW  
G2 4TB

[Signature] Attorney

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